

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

FRANKLIN CLAYTON,

Plaintiff,

v.

MICHIGAN DEPARTMENT OF  
CORRECTIONS, et al.,

Defendants.

Case No. 1:16-cv-830

HON. JANET T. NEFF

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**OPINION AND ORDER**

Plaintiff filed this prisoner civil rights action pursuant to 42 U.S.C. § 1983 alleging claims based on his administrative segregation due to his HIV status and repeated sexual misconducts during incarceration. Plaintiff filed a motion for summary judgment, essentially seeking a stay of this case pending his release from MDOC custody and the appointment of counsel (ECF No. 52). Defendants filed a motion for summary judgment based in part on immunity and arguing that they otherwise are entitled to judgment as a matter of law (ECF No. 55). The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R&R, ECF No. 91), recommending that Plaintiff's motion for summary judgment be denied; Defendants' motion for summary judgment be denied in part as moot and granted in part; and that this action be terminated. The matter is presently before the Court on Plaintiff's objections to the Report and Recommendation (Pl. Obj., ECF No. 92). In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report

and Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Order.

The Magistrate Judge carefully and thoroughly considered the record; the parties' arguments; and the law governing Plaintiff's Due Process claim, and Plaintiff's claims of violations under the Americans with Disabilities Act (ADA) and the Rehabilitation Act (RA). The Magistrate Judge also addressed this Court's prior consideration of Defendants' Eleventh Amendment immunity defense (asserted by Defendants Pandya, Washington, McKee and Borgerding). The Magistrate Judge properly analyzed the factual and legal support for Plaintiff's claims. None of the assertions in Plaintiff's objections persuades the Court otherwise. Rather, Plaintiff's objections set forth a disjointed chronology and update of "background records" in objection to the Report and Recommendation, seeking reconsideration and making a general assertion that defense counsel did not allow discovery.

Plaintiff's objections fail to demonstrate any factual or legal error in the Magistrate Judge's analysis or ultimate conclusions. That is, Plaintiff has failed to present any evidence necessitating trial on the claims alleged, and Defendants are entitled to summary judgment, except with respect to the part of their motion seeking Eleventh Amendment immunity, which is moot (R&R, ECF No. 91 at PageID.2122, 2128).

Accordingly, this Court adopts the Magistrate Judge's Report and Recommendation as the Opinion of this Court. A Judgment will be entered consistent with this Opinion and Order. *See* FED. R. CIV. P. 58. Because this action was filed *in forma pauperis*, this Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal of this decision would not be taken in good faith. *See McGore v. Wigglesworth*, 114 F.3d 601, 610 (6th Cir. 1997), overruled on other grounds by *Jones v. Bock*, 549 U.S. 199, 206, 211-12 (2007).

Therefore:

**IT IS HEREBY ORDERED** that the Objections (ECF No. 92) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 91) is APPROVED and ADOPTED as the Opinion of the Court.

**IT IS FURTHER ORDERED** that Plaintiff's Motion for Summary Judgment (ECF No. 52) is DENIED.

**IT IS FURTHER ORDERED** that Defendants' Motion for Summary Judgment (ECF No. 55) is DENIED in part as moot and GRANTED in part.

**IT IS FURTHER ORDERED** that, all claims having been resolved, a judgment will enter closing the case.

**IT IS FURTHER ORDERED** that this Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this decision would not be taken in good faith.

Dated: March 27, 2018

/s/ Janet T. Neff  
JANET T. NEFF  
United States District Judge